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Typed or Printed Name of Person Mailing Paper or Fee: Brian C. Dauphin

Signature: B. C. Dauphin

07-19-2004

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TRADEMARK: MONSTER SEATS

IN THE

UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK TRIAL AND APPEAL BOARD

In the matter of trademark registration Application Serial No. 78/197,749 published in the Official Gazette (Trademarks) on February 3, 2004:

MONSTER CABLE PRODUCTS, INC.

Opposer,

v.

DUANE C. BLAKE, individual.

Applicant.

) Opposition No. 91160772
)
)
) Applicant Duane Blake's
) Answer and Counterclaim
) to Monster Cable's
) Notice of Opposition
)
)
)

07/21/2004 TMCAANTS 00000062 78197749

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2900 Crystal Drive
Arlington, VA 22202-3514

ANSWER

Duane C. Blake ("Applicant") hereby answers the Notice of Opposition of Monster

Cable Products, Inc., ("Opposer") as follows:

Answer and Counterclaims to Opposition

1. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations and averments set forth in paragraphs 1, 2, 28 and 29 of the Notice of Opposition, and on that ground Applicant denies each and every allegation and averment in paragraphs 1, 2, 28 and 29 of the Notice of Opposition.

2. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations and averments that Opposer is the owner of federal trademark registrations set forth in paragraphs 3 through 27 of the Notice of Opposition, and on that ground Applicant denies those allegations and averments. Applicant admits that the documents labeled as Exhibits A through Z are attached to the Notice of Opposition and purport to be copies of federal trademark registrations. Except as so admitted, Applicant denies each and every allegation and averment in paragraphs 3 through 27 of the Notice of Opposition.

3. Applicant denies each and every allegation and averment in paragraph 30 of the Notice of Opposition.

4. Each and every allegation and averment in the Notice of Opposition not specifically admitted are denied.

AFFIRMATIVE DEFENSES

5. Applicant adopts and incorporates by reference each and every averment contained in paragraphs 1 through 4 above, as though fully set forth.

6. Each of the purported claims set forth in the Notice of Opposition is barred in whole or in part because Opposer does not state a claim in which relief may be granted.

7. Each of the purported claims set forth in the Notice of Opposition is barred in whole or in part because Appellant's use or registration of its MONSTER SEATS trademark

does not, or will not actually or proximately cause any losses or damage allegedly sustained by Opposer, and, therefore, Opposer lacks standing to bring the Opposition.

8. Each of the Opposer's dilution claims set forth in the Notice of Opposition is barred in whole or in part on the grounds that Applicant is exempt from such claims under the Lanham Act.

9. There is no likelihood of confusion, mistake or deception because, *inter alia*, Applicant's mark MONSTER SEATS is not confusingly similar to the pleaded marks of the Opposer as Applicant's marks are distinctively different from the marks of the Opposer. Under the anti-dissection rule, it is improper to disregard part of a mark in order to find confusion with the remainder of the mark.

10. There is no likelihood of confusion, mistake or deception because, *inter alia*, Applicant's mark MONSTER SEATS is not confusingly similar to the pleaded marks of Opposer as Applicant's mark and Opposer's pleaded marks are not similar in terms of the sight, sound and meaning trilogy.

11. There is no likelihood of confusion, mistake or deception because, *inter alia*, Applicant's mark MONSTER SEATS is not confusingly similar to the pleaded marks of Opposer using the thirteen factors listed in *In re E.I. Du Pont de Nemours & Co.*, 476 F.2d 1357, 177 U.S.P.Q.2d 563 (C.C.P.A 1973).

12. There is no likelihood of confusion, mistake or deception because, *inter alia*, Applicant's mark is not confusingly similar to the pleaded marks of Opposer. Any similarity, if at all, between Applicant's mark and the pleaded marks of Opposer is in the term "MONSTER", which is a term that is not wholly original. Also, upon information and belief, Applicant asserts that the term "MONSTER" has been used and registered by numerous third parties in a variety of fields, including clothing, and is therefore, weak. As a result, a determination of a likelihood of confusion between the pleaded marks of Opposer and the

mark of Applicant cannot be made based on the term "MONSTER".

13. There is no likelihood of confusion, mistake or deception because, *inter alia*, based on the eight factors of the Lanham Act §43(c)(1), Opposer's marks have not become famous.

14. Upon information and belief, Opposer's alleged federal trademark registrations are not used and promoted as a family of marks.

15. Each of the purported claims that pertain to Opposer's alleged registrations for the "MONSTER" marks set forth in the Notice of Opposition is barred in whole or in part because, on information and belief, the marks have been used by Opposer as noun forms, and in a functional and a descriptive manner.

16. Each of the purported claims that pertain to Opposer's alleged federal trademark registration No. 1,414,284, in Class 25 for the "I AM A MONSTER" mark set forth in the Notice of Opposition is barred in whole or in part because use of the mark for t-shirts and for related goods is functional.

17. Each of the purported claims that pertain to Opposer's alleged federal trademark registration No. 1,414,284, in Class 25 for the "I AM A MONSTER" mark set forth in the Notice of Opposition is barred in whole or in part because use of the mark for t-shirts and for related goods has not been used as a trademark.

18. Each of the purported claims that pertain to Opposer's alleged federal trademark registration No. 1,414,284, in Class 25 for the "I AM A MONSTER" mark set forth in the Notice of Opposition is barred in whole or in part because use of the mark for t-shirts is abandoned.

19. Each of the purported claims set forth in the Notice of Opposition is barred in whole or in part because, on information and belief, Opposer has not properly maintained the alleged federal trademark registrations listed in Exhibits A through Z, as these registrations

have been used incorrectly and inconsistently, in contraindication of the Lanham Act.

20. Each of the purported claims set forth in the Notice of Opposition is barred in whole or in part because goods manufactured, sold, or licensed to third parties by Opposer are not confusingly similar to goods manufactured, sold, or licensed to third parties by Applicant, and no consumers have been or will be confused, deceived, or mistaken into believing that goods manufactured, sold, or licensed to third parties by Opposer originate from the same source as goods manufactured, sold, or licensed to third parties by Applicant.

21. Applicant reserves the right to assert other defenses, including affirmative defenses, as revealed during the course of discovery.

COUNTERCLAIMS

1. Applicant realleges and incorporates each and every defense, allegation, and averment contained in paragraphs 1 through 21 above, as though fully set forth.

2. Opposer purports to be the owner of federal trademark registrations issued under a number of International Classes, as listed in Exhibit's A through Z of the Notice of Opposition.

3. On information and belief, Opposer's alleged federal trademark registrations have been, and are now being, misused by Opposer, and should be canceled, partially canceled, or restricted to remedy such misuse.

4. On information and belief, Opposer's alleged federal trademark registrations have been abandoned by the Opposer, and should be canceled, partially canceled, or restricted to remedy such abandonment.

5. On information and belief, Opposer's claims in the Notice of Opposition against Applicant are being facilitated by the misuse and abandonment of the alleged federal trademark registrations.

6. Applicant reserves the right to assert other counterclaims, as revealed during the course of discovery.

RELIEF SOUGHT

WHEREFORE, Applicant prays for relief as follows:

A. For dismissal of this Opposition, and registration of Applicant's 'Monster Seats' trademark application Serial No. 78/197,749 upon the principal register of the United States Patent and Trademark Office;

B. For findings in favor of Applicant and against Opposer on Opposer's opposition and Applicant's Affirmative Defenses and Counterclaims, including an order canceling or partially canceling Opposer's alleged federal trademark registrations, as listed in Exhibits A through Z of the Notice of Opposition, or otherwise rectifying the Trademark Register of the United States Patent and Trademark Office, where deemed necessary and proper.

Respectfully submitted,

Dated: July 19, 2004

By: 

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Attorney for Applicant(s)
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CERTIFICATE OF SERVICE

I hereby certify that a copy of this paper, along with all papers referred to as being attached or enclosed, is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 and is addressed to Matthew A. Powelson, Esq., 19 Upper Ragsdale Drive, Suite 200, P.O. Box 3140, Monterey, California 93942-3140, on this 19th day of July, 2004.

EXPRESS LABEL NO. EV 299521787 US

Dated: July 19, 2004

By: B. C. Dauphin
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TRADEMARK APPLICATION
Attorney Docket No. 100118-0003

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT(S): Duane Blake
ASSIGNEE:
SERIAL NO.: 78/197,749
FILING DATE: December 24, 2002
FOR: MONSTER SEATS

TTAB

DATE: July 19, 2004
Andover, Massachusetts

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Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

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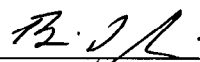
Dear Sir/Madam,

Transmitted herewith for filing in the present matter are the following documents:

- ☒ Answer to Notice of Opposition.
- ☒ Return Postcard.
- ☒ Fee.

If the enclosed papers are considered incomplete, please contact the undersigned at 978/749-9800, Andover, Massachusetts.

Respectfully submitted,



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